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**MEMORANDUM
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TO: Docket Control Center

FROM: Ernest G. Johnson
Director
for Utilities Division

2007 DEC 20 P 3:49

AZ CORP COMMISSION
DOCKET CONTROL

Arizona Corporation Commission

DOCKETED

DEC 20 2007

DATE: December 20, 2007

DOCKETED BY	<i>me</i>
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RE: REQUEST FOR EXTENSION OF COMPLIANCE DEADLINE - JOHNSON
UTILITIES, L.L.C. (DOCKET NO. WS-02987A-04-0288 - DECISION NO. 68237)

In Decision Nos. 68235 and 68237, both dated on October 25, 2005, the Arizona Corporation Commission ("A.C.C." or "Commission") approved the application of Johnson Utilities Company ("Johnson") for extension of the existing Certificate of Convenience and Necessity ("CC&N") for water and wastewater service.

As part of Decision No. 68235, the Commission ordered that Johnson:

"...must file with Docket Control, as a compliance item in this docket, the Unified (Aquifer Protection) Water Quality Permits issued by ADEQ for the Copper Basin Regional Wastewater Treatment Facility within 365 days of the decision in this case."

As part of Decision No. 68237, the Commission ordered that Johnson:

"... shall file with Docket Control, as a compliance item in this docket, a copy of the Unified (Aquifer Protection) Water Quality Permits by ADEQ for ... the Copper Basin Regional Wastewater Treatment Facility, with(in) 24 months of the effective date of this Decision."

Based on the Decision date of October 25, 2005, the Aquifer Protection Permit ("APP") was technically due on or about October 25, 2006, for Decision No. 68235, and on or about October 25, 2007 for Decision No. 68237.

On October 4, 2007, the Company docketed a further two year request for extension of time to comply with the Copper Basin APP requirement. The Company docketed the request in both Docket Nos. W-02987A-04-0288 and W-02987A-05-0088 and requested the same extension of time (until October 25, 2009) to file the APP relating to the Copper Basin Wastewater Treatment Facility ("Copper Basin Facility").

In each application for extension, the Company stated that they filed the APP application with the Arizona Department of Environmental Quality ("ADEQ") but experienced a significant delay in its processing due to an illegal conveyance of the subject property:

"We submitted our APP application on May 4, 2006 with ADEQ and have run into an unexpected delay. During the permitting processes we learned that the plant site had been illegally conveyed by the previous land owner to a third party in 2006. We were forced to file a lawsuit to regain clear title to the property. Although it was a lengthy process we have received a judgment from the courts conveying the property back to the Utility.

Now that we have received clear title, we are re-filing our APP application with ADEQ and are in need of an extension of the compliance date. We hereby request a 24 month extension of the compliance date to October 25, 2009."

On December 11, 2007, Staff asked Mr. Daniel Hodges, Vice President of Johnson, to provide evidence supporting the statement that there was a lawsuit over the property title. Mr. Hodges provided a copy of a Judgment in Case No. CV2006-1607 of the Superior Court of Arizona – County of Pinal showing Johnson Utilities as Plaintiffs vs. SHR Sales Company, LLC, et al as Defendants. Page two of the Judgment states the following:

"It is hereby ordered, adjudged and decreed that pursuant to Rules 56 and 70, Ariz. R. Civ. P., SHR Sales, LLC and G2F2, Inc. are divested of all right, title and interest in and to the Properties described in Exhibits B and C attached hereto and that fee simple title in and to the Properties is vested in Johnson Utilities, LLC."

A review of Exhibit B and C attached to the Judgment showed property descriptions with the title "Wastewater Treatment Plant Site" and "Copper Basin Lift Station #1 and #2", respectively.

In addition to requiring a cleared title in the application, Mr. Hodges stated that ADEQ also listed a zoning classification as another issue in the processing of the APP. Mr. Hodges explained that the Copper Basin Facility was zoned with an Industrial classification rather than with a Wastewater Treatment Facility classification. This classification represents another issue that will need to be corrected as part of ADEQ's APP processing.

Based on the above, Staff recommends that the due date for Decision No. 68237 be extended to October 25, 2009 as proposed by the Company. In addition, Staff recommends that no further time extensions be granted to comply with Decision No. 68237.

EGJ:BKB:lhbm

Originator: Brian K. Bozzo

Attachment

SERVICE LIST FOR: JOHNSON UTILITIES, LLC.
DOCKET NO. WS-02987A-04-0288

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